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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,938	08/09/2001	Ron McCabe	6071-101	4930
20575	7590	08/10/2006	EXAMINER	
MARGER JOHNSON & MCCOLLOM, P.C. 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204			KOPPIKAR, VIVEK D	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/925,938	Applicant(s) MCCABE, RON	
	Examiner Vivek D. Koppikar	Art Unit 3626	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 38-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 38-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Application

1. Claims 1-26 and 38-46 have been examined in this application. This Final Office Action is in response to the "Amendment" and "Remarks" filed on July 3, 2006.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crawford in view of "Data Security Harmed by Blissful Ignorance" published in Insurance Accountant on April 12, 1999 (Page 1; Volume 1, Number 11) (This reference will be hereinafter referred to simply as "Insurance Accountant").

(A) As per claim 1, Crawford in view of Insurance Accountant teach a method of employing a technical protection service pursuant to the issuance or maintenance of a data/presence insurance policy, the method to be performed by an entity desiring coverage by the policy, the method comprising:

employing a technical protection service, the technical protection service protecting at least one of data of the entity and a presence of the entity (Crawford: Col. 14, Ln. 40-44).

Crawford does not teach the following steps which are taught by Insurance Accountant:

obtaining the data /presence insurance by providing evidence of existence of the technical protection service (Note: In Insurance Accountant the insured must provide the insurance

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company with evidence of the capabilities of the technical protection service prior to the insurance of the insurance policy) (Insurance Accountant: Page 2, Paragraphs 1 and 6-8); and memorializing a contract for the data/presence insurance (Insurance Accountant: Page 2., Paragraph 9).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the teachings of Crawford with the aforementioned teachings from Insurance Accountant with the motivation of an entity of having a means of receiving compensation if they incurred a loss of data through a security breach in their systems, as mentioned in Insurance Accountant (Page 2, Paragraph 14).

(B) As per claim 2, the combined method of Crawford in view of Insurance Accountant comprises the step of reporting to the insurer on the status of the technical protection service (Insurance Accountant: Page 2, Paragraph 8). The motivation for making this modification to the teachings of Crawford is the same as set forth in the rejection of Claim 1, above.

(C) As per claim 3, the combined method of Crawford in view of Insurance Accountant teaches a step of establishing a technical protection service which further comprises establishing a data mirroring service (Crawford: Col. 14, Ln. 45-61).

(D) As per claim 4, the combined method of Crawford in view of Insurance Accountant teaches a step of establishing a technical protection service which further comprises establishing a virus detection service (Crawford: Col. 14, Ln. 45-61).

(E) As per claim 5, the combined method of Crawford in view of Insurance Accountant teaches a step of creating a snapshot of the data of the entity; and if a virus is detected, rolling back the data to a point in time before the virus was detected using the snapshot (Crawford: Col.

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14, Ln. 45-61). (Note: The examiner takes the position that the archival services taught in Crawford allow a user to roll back the data to a given point in time.)

(F) As per claims 6 and 7, the combined method of Crawford in view of Insurance Accountant teaches obtaining the data/presence insurance and this step further comprises obtaining data (or presence) insurance (Crawford: Col. 2, Ln. 5-21 and Col. 14, Ln. 62-Col. 15, Ln. 5) and Insurance Accountant (Paragraph 14). The motivation for making this modification to the teachings of Crawford is the same as set forth in the rejection of Claim 1, above.

(G) As per claim 8, this claims repeats features previously addressed in the rejections of claims 1-2 and is rejected on the same basis.

(H) As per claim 9, this claim repeats features previously addressed in the rejection of claim 3 and is rejected on the same basis.

(I) As per claim 10, this claim repeats features previously addressed in the rejection of claim 4 and is rejected on the same basis.

(J) As per claim 11, this claim repeats features previously addressed in the rejection of claim 5 and is rejected on the same basis.

(K) As per claims 12-13, these claims repeat features previously addressed in the rejections of claims 6-7, above, respectively and are rejected on the same basis.

(L) As per claim 14, the combined method of Crawford in view of Insurance Accountant teachings a method for providing data/presence insurance coverage to an entity in view of a technical service protection to be employed by or provided to the entity, the method to be performed by an insurer, the method comprising the steps of:

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Crawford teaches the use of a technical protection service (Crawford: Col. 14, Ln. 40-44) but does not teach the following steps which are taught by Insurance Accountant:

calculating a premium for the data/presence insurance coverage, the premium calculation depending on an expected result of the technical protection service (Insurance Accountant: Page 2, Paragraphs 1, 6-8 and 14) (Note: Insurance Accountant requires that an entity employ a network security/protection device before an insurance policy is ensured so the premium charged in Insurance Accountant necessarily takes into account of the expected result of the network security/protection device); and

contracting with the insured entity for the data/presence insurance coverage in view of technical protection service, the contracting step memorialized in an agreement whose named parties or intended beneficiaries include the insurer and the insured entity (Insurance Accountant: Page 2, Paragraph 9).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the teachings of Crawford with the aforementioned teachings from Insurance Accountant with the motivation of an entity of having a means of receiving compensation if they incurred a loss of data through a security breach in their systems, as mentioned in Insurance Accountant (Page 2, Paragraph 14).

(M) As per claim 15, in the combined method of Crawford in view of Insurance Accountant the contracting step memorializes an agreement whose named parties or intended beneficiaries include a technical services provider, the insurer, and the insured entity, and wherein the technical services provider provides the technical protection service to the insured entity under the agreement (Crawford: Col. 15, Ln. 2-5) and Insurance Accountant (Page 2, Paragraphs 1, 6-9

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and 14). The motivation for making this modification to the teachings of Crawford is the same as set forth in the rejection of Claim 14, above.

(N) As per claim 16, in the combined method of Crawford in view of Insurance Accountant the technical services provider reports to the insurer on the status of the technical protection service (Crawford: Figure 6B, Col. 25, Ln. 18-23) and Insurance Accountant (Page 2, Paragraphs 1, 6-9 and 14). The motivation for making this modification to the teachings of Crawford is the same as set forth in the rejection of Claim 14, above.

(O) As per claim 17, in the combined method of Crawford in view of Insurance Accountant the calculating step depends on the expected result of a data mirroring service as the technical protection service (Crawford: Col. 14, Ln. 45-61) and Insurance Accountant (Page 2, Paragraphs 1, 6-9 and 14). The motivation for making this modification to the teachings of Crawford is the same as set forth in the rejection of Claim 14, above.

(P) As per claims 18-21, claims repeat features previously addressed in the rejection of claims 14, above, respectively and are rejected on the same basis. Furthermore, the examiner takes Official Notice with respect to the other claimed factors used in calculating insurance premiums. At the time of the invention, it would have been obvious for one skilled in the art to have included these factors in calculating insurance premiums with the motivation of being able to better estimate future claims because the claimed factors directly affect the frequency and amount of premiums that would have to be paid by an insurance company.

(Q) As per claims 22-23, in the combined method of Crawford in view of Insurance Accountant the contracting step memorialized data insurance and presence insurance in the agreement (Crawford: Col. 2, Ln. 5-21 and Col. 14, Ln. 62-Col. 15, Ln. 5) and Insurance

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Accountant (Page 2: Paragraph 9 and Paragraph 14). The motivation for making this modification to the teachings of Crawford is the same as set forth in the rejection of Claim 14, above.

(R) As per claim 24, Crawford in view of Insurance Accountant teaches a system comprising a storage medium configured with insured data belonging to an insured entity (Crawford: Col. 14, Ln. 40-Col. 15, Ln. 5) and a technical services means for supporting the provision to the insured entity of technical data protection services pursuant to an agreement whose named parties or intended beneficiaries include a technical services provider, an insurer, and the insured entity (Crawford: Col. 14, Ln. 40-44 and Col. 15, Ln. 2-5) and Insurance Accountant (Page 2, Paragraphs 1, 6-9 and 14). The motivation for making this modification to the teachings of Crawford is the same as set forth in the rejection of Claim 14, above.

(S) As per claim 25, in Crawford in view of Insurance Accountant the technical services means comprises remote mirroring tools (Crawford: Col. 14, Ln. 45-51).

(T) As per claim 26, in Crawford in view of Insurance Accountant the technical services means comprises anti-virus software (Crawford: Col. 14, Ln. 40-44).

4. Claims 38-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crawford in view of US Patent Number 5,855,005 to Schuler.

(A) As per claim 38, the combined method of Crawford in view of Schuler teaches the step of providing insurance against data loss, comprising:

establishing a remote data volume including all data of a local data volume at a point in time (Crawford: Col. 14, Ln. 40-61);

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updating the remote data volume over a communications link with data changes to the local data volume (Crawford: Col. 14, Ln. 40-61).

Crawford does not teach the following feature which is taught by Schuler:

determining an exposure (recovery) period, the exposure period based on a time period between a time a data change occurs on the local data volume and a time the data change occurs on the remote data volume (i.e. amount of time where there is no protection for the data or the amount of time the data is at risk or is exposed to a risk of being destroyed with a backup data source) (Schuler: Col. 1, Ln. 27-32 and Col. 4, Ln. 43-47);

calculating an insurance premium using the exposure period (Schuler: Col. 1, Ln. 5-13).

At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the teachings of Crawford with the above mentioned teachings from Schuler with the motivation of having a means to calculate a policy premium charged to a business entity as recited (in which the premium is based, at least in part, on the amount of exposure) in Schuler (Col. 1, Ln. 5-13).

(B) As per claim 39, the combined method of Crawford in view Schuler teach the following steps:

monitoring a data rate change between the local data volume and the remote data volume, the data rate change indicating a rate at which data changed are transmitted to the remote data volume (Schuler: Col. 1, Ln. 27-33); and

adjusting the insurance premium in response to the data change rate (Schuler: Col. 1, Ln. 27-33).

The motivation for making this modification to the teachings of Crawford is the same as

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set forth in the rejection of Claim 38, above.

(C) As per claim 40, the combined method of Crawford in view of Schuler does not teach the following step:

wherein adjusting the insurance premium further comprises limiting coverage for loss of data changes from the local data volume if the data change rate increases above a predefined threshold.

The examiner takes Official Notice that this feature is well known in the insurance industry. The feature claimed is equivalent to an insurance company imposing an upper limit of its liability for losses incurred. At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined teachings of Crawford in view of Schuler with the above mentioned feature with the motivation of providing an insurance company with a means of preventing itself from becoming insolvent from having to pay out an unlimited amount of claims.

(D) As per claims 41 and 43, this claim repeats features previously addressed in the rejection of claim 20 and is rejected on the same basis.

(E) As per claim 42, the combined method of Crawford in view of Schuler does not teach that there is an inspection of the at least one of the local data volume, the remote data volume and the communications link and also does not teach that the insurance premium is calculated in response to this inspection, however the examiner takes Official Notice that this feature is well-known in the art. At the time of the invention, it would have been obvious for one skilled in the art to have included this step in the combined teachings of Crawford in view of Schuler with the motivation of having a means to more accurately predict insurance claims.

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(F) As per claims 44-46, this claim repeats features previously addressed in the rejection of claims 18 and 38 above and are rejected on the same basis.

Response to Arguments

5. Applicant's arguments filed on July 3, 2006 with respect to claims 1-26 and 38-46 have been considered but are moot in view of the new grounds of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquire concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. The fax telephone numbers for

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this group are either (571) 273-8300 or (703) 872-9326 (for official communications including After Final communications labeled "Box AF").


8. Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,



Vivek Koppikar

8/2/2006



JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER